

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, its assignees and/or
successors,

Plaintiff,

v.

JUANA INES TELLO, JESSE TELLO,
REINA TELLO, and DOES 1-10,
inclusive,

Defendants.

No. C 12-1560 CW

ORDER GRANTING
PLAINTIFF'S MOTION
TO REMAND AND
GRANTING
DEFENDANTS'
APPLICATION TO
PROCEED IN FORMA
PAUPERIS

On March 28, 2012, Defendants Juana Ines Tello and Jesse Tello removed this case from the San Francisco County Superior Court and moved for leave to proceed in forma pauperis (IFP). From the face of the application it appears that Defendants meet the financial requirements to proceed IFP and the application to proceed IFP is granted.

On April 6, 2012, Plaintiff Federal National Mortgage Association moved for remand. Opposition to the motion to remand was due on April 20, 2012, but has not been filed. On May 3, 2012, Plaintiff re-noticed its motion to remand. The Court has

1 reviewed the removed complaint and concludes that it must be
2 remanded.

3 A defendant may remove a civil action filed in state court to
4 federal district court so long as the district court could have
5 exercised original jurisdiction over the matter. 28 U.S.C.
6 § 1441(a). For removal to be proper, there must be federal
7 question jurisdiction or diversity jurisdiction. Franchise Tax
8 Bd. of State of California v. Construction Laborers Vacation Trust
9 for Southern California, 463 U.S. 1, 10 (1983). District courts
10 have federal question jurisdiction over civil actions arising
11 under the United States Constitution, or the laws or treaties of
12 the United States. 28 U.S.C. § 1331. District courts have
13 diversity jurisdiction over civil actions when they are between
14 citizens of different states and the amount in controversy exceeds
15 \$75,000. 28 U.S.C. § 1332(a).

16 Title 28 U.S.C. § 1447(c) provides that if, at any time
17 before judgment, it appears that the district court lacks subject
18 matter jurisdiction over a case previously removed from state
19 court, the case must be remanded. On a motion to remand, the
20 scope of the removal statute must be strictly construed. Gaus v.
21 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong
22 presumption' against removal jurisdiction means that the defendant
23 always has the burden of establishing that removal is proper."
24 Id. Courts should resolve doubts as to removability in favor of
25 remanding the case to state court. Id.

26 This removed case is a residential unlawful detainer action
27 following a non-judicial foreclosure. It contains one cause of
28 action for unlawful detainer, which arises exclusively under state

1 law. In their notice of removal, Defendants argue that
2 foreclosure was improper because Plaintiff did not have the
3 authority to foreclose on their home. It appears that Defendants
4 are alleging that federal jurisdiction exists under the Federal
5 Debt Collection Act, 15 U.S.C. §§ 1692(c) through (g). However,
6 "[t]he presence or absence of federal-question jurisdiction is
7 governed by the well-pleaded complaint rule, which provides that
8 federal jurisdiction exists only when a federal question is
9 presented on the face of the plaintiff's properly pleaded
10 complaint.'" Rivet v. Regions Bank of La., 522 U.S. 470, 475
11 (1998) (quoting Caterpillar Inc. v. Williams, 482 U.S. 386
12 (1987)). A federal defense is not part of a plaintiff's properly
13 plead statement of his or her claim. Id. (citing Metropolitan
14 Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987)). A case,
15 therefore, may not be removed to federal court based on a federal
16 defense "even if the defense is anticipated in the plaintiff's
17 complaint, and even if both parties admit that the defense is the
18 only question truly at issue in the case." Franchise Tax Bd., 463
19 U.S. at 14; see Rivet, 522 U.S. at 475.

20 Because the only possible federal issue in this case involves
21 a defense, federal question jurisdiction is lacking.

22 The complaint alleges that Plaintiff seeks damages in an
23 amount not to exceed \$10,000. Because the amount in controversy
24 is less than \$75,000, diversity jurisdiction is lacking. See St.
25 Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 291 (1938)
26 (the status of the case as disclosed by the plaintiff's complaint
27 is controlling for purposes of removal).
28

1 Because there is no federal question or diversity
2 jurisdiction, this Court lacks subject matter jurisdiction over
3 this case and it must be remanded.

4 CONCLUSION

5 For the foregoing reasons, the Court grants Defendants'
6 application to proceed IFP and grants Plaintiff's motion to remand
7 this case to the San Francisco County Superior Court (docket nos.
8 3, 6).

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10 IT IS SO ORDERED.

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12 Dated: 5/29/2012

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14 CLAUDIA WILKEN
15 United States District Judge
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